

# Towards a Reform in Lebanon? Interview with the President of the Constitutional Council ISSAM SLEIMAN

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Issam Sleiman , Robert Poll Mi 20 Jun 2018

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*The Lebanese state is a quite complex and rigid political system that is based on the principle of confessional parity. How does the Constitutional Council of Lebanon fit in this system?*

The Constitutional Council is composed of ten members. Five members are elected by the Parliament and five are appointed by the Council of Ministers by a two-thirds majority. The members' term of office is four years, non-renewable. The presidents of the Constitutional Council are elected for three years, which can be renewed for a second term. The Council was established by the the law no-250 in 1993. The first article of this law characterizes the Council as a constitutional institution of jurisdictional character. Nevertheless it is not part of the judiciary. It is independent from all other branches of government! It is independent from the legislature, the executive and the judiciary.



*In contrast, the German Federal Constitutional Court is part of the...*

... judicial system. No, here [in Lebanon] we are independent. Like in France. In Lebanon the Constitutional Council is a constitutional institution of jurisdictional character. Why jurisdictional character? Because the decisions it takes have the authority of the concerned matter and can't be appealed. These are definitive decisions.

*The Taif agreement, which ended 15 years of civil war in Lebanon, included the foundation of a Lebanese Constitutional Council. With the Parliament's decision in 1990, the agreement became part of the Constitution – but not entirely. Why?*

The Taif agreement states that the Constitutional Council is charged with the interpretation of the Constitution, the review of the constitutionality of laws and conflicts over presidential and parliamentary elections. When they [the politicians] modified the Constitution in 1990 in light of the the Taif agreement, they attributed two competences to the Council – only two: constitutional review and the power to rule over conflicts concerning the elections. The Parliament has refused to give the Constitutional Council the competence to interpret the Constitution because most of the parliamentarians insisted that only Parliament itself should have the right to interpret the Constitution.

*But in order to control the constitutionality of laws, one necessarily has to interpret the constitution, right?*

Yes, the Constitutional Council interprets the Constitution as far as it is controlling the constitutionality of laws. But if there is a conflict between the politicians around the interpretation of a certain article of the Constitution, in this case, there is no institution charged to resolve the conflict. That is a big problem, because the parliamentarians' conflicting interpretations paralyze the institutions and can be overcome only by political compromise, which in turn weakens the constitutional system. That is why I proposed a project to reform the Council. We have to extend its competences! Among the propositions [are the following]: Giving the Council the right to review the constitutionality of organic laws on its own initiative, so it can interpret the Constitution without depending on the initiative of the executive or legislature. Right now, those who have the right to initiate a control are the President of the Republic, the Speaker of the Parliament, the Prime minister or at least ten deputies. Furthermore the leaders of the religious communities acknowledged by the state have the right to submit an issue to the Council, solely if the concerned law affects their personal status laws or religious freedom. In Lebanon, every religious community has its own personal status law. Individuals have no right to submit an issue; the citizens have no access to the Constitutional Council. That is why, among my propositions, I insisted to give the citizens the right to appeal through the courts. Just like the QPC [Question prioritaire de constitutionnalité], which was adopted by France in 2008.

*Apart from the historical influence of the French system on Lebanon, do you consider France to be an ideal model for the future of the Lebanese state or are there others which could serve as inspiration?*

Of course, the Lebanese political system was inspired by the French political system. In Lebanon we have a parliamentary system, whereas France has a semi-parliamentary and semi-presidential system. In France the President of the Republic has quite extensive powers, while here he has powers, but they are [more] limited. And yes, I also studied the political system in Germany. The citizens can submit issues to the Constitutional Court all by themselves. That's more developed than the French system. Concerning the influences: The Constitutional Council is part of the Association of Constitutional Courts using the French Language and attends its meetings regularly. Furthermore we are a founding member of the Union of Arab Constitutional Courts and Councils and the World Conference on Constitutional Justice which have both a close relationship to the Venice Commission.

*The term of office for members of the Constitutional Council is limited to six years and can't be renewed. In the case of expiry Article 4 of the internal regulation states that leaving members stay until their successors have been appointed. It has been nine years since your appointment as a member of the Council. Why didn't the Parliament and the Council of Ministers appoint your successor yet?*

To avoid vacancies at the Constitutional Council, Article 4 of the internal regulation states that the members continue to exercise their function, while waiting on the appointment of their successors. Why new members have not been appointed yet is a political issue; it

lacks agreement between the political groups. It is really important to appoint new members, but if they are not appointed, we will continue to exercise our functions and fulfill our duty. Appointing new members or not appointing them is not our concern.

*A few weeks ago, the first parliamentary elections in nine years were held in Lebanon, for which the Parliament adopted a new electoral law. What do you think about the outcome?*

The new electoral law is complicated because it is based on the proportional and majoritarian system at the same time. It is a proportional system concerning the preferential vote and a majoritarian system with regard to the electoral lists. It is quite complicated. But this new law enhances the representation of religious minorities in regions dominated by a majority of another religion. For example: Baalbek-Hermel is a large constituency, in which nearly 90% of the population are Shia and Sunni and only 10% are Christians. In the old system, the Christian deputy was elected by Muslims. Now, in the new system, one of the elected Christian deputies in this region belongs to the Lebanese Forces. At Akkar for example, also a region with a Muslim majority, the Free Patriotic Movement has won a Greek-Orthodox seat. So the system has its inconveniences and advantages.

*The confessional system in Lebanon was created to reconcile a plural and deeply divided society. To maintain a certain level of stability and preserve peace. What are the major challenges of the current system?*

Take, for example, the representation of the Shia community: it is monopolized by Hezbollah and the Speaker of the Parliament, Nabih Berri. A similar situation can be found with the Sunnis. Before the election the Prime Minister Saad Hariri had 30 deputies, now he has not more than 19 or 20. His opponents within the community have won the other seats. So now we have several Sunni personalities, who are capable of forming a new government. Of course Saad Hariri [remains] the strongest, but he is not as strong as he was before the elections. Therefore our problem lies in the monopolization of representation of specific religious communities in the parliamentary system. This system is not working because it needs a parliamentary majority to form the government and an opposition to hold the government accountable. At present, we can't form a government without Hezbollah and Nabih Berri. But with them, we also have to integrate the leaders of other religious communities, thus we are obligated to form a national unity government. As a consequence we don't have opposition inside the Parliament but within the government. The government is not able to take decisions and the Parliament is not able to force the government to resign. That is why our parliamentary system is paralyzed.

*But the preamble of the Constitution states that the abolition of political confessionalism shall be a basic national goal.*

We have to await both developments in the region and in Lebanon. We can't create a secular system in Lebanon – in a region that is dominated by religious sentiment. Unfortunately, it is growing more and more. Religious sentiments have never been as strong as nowadays. In the 50s and 60s, within the factions led by Christians, we had a lot of Muslim deputies; Sunni, Shia and Druze. Currently the parliamentary factions are very pure in regard to their confessional composition.

*The President of the Republic Michel Aoun has expressed his support for your proposition*

*to reform the Constitutional Council. Apart from him, interest among politicians seems inexistent. When do you envision the realization of your project?*

Michel Aoun wants to reform the system. But he faces a lot of obstacles. It is not only up to him to decide and unfortunately, most of the politicians don't accept the idea of reform because they don't want the Constitutional Council to exercise an effective control over Parliament. That is the reigning mentality among the political class in Lebanon. They don't want to be controlled by any institution. So in my opinion it will take [at least] eight years, because on the way towards reform we will encounter a lot of obstacles. In general, I wish that the Lebanese political system will evolve to build a real state of law and real democracy. After all, the political order in Lebanon contains a democratic core. We have, for example, a lot of liberties which are guaranteed effectively. But democracy is not only based on freedom but also on justice and social rights. In Lebanon, there are big disparities between rich and poor people and, unfortunately, also interactions between social and confessional fragmentations. The poor are run by the rich. It is not easy to create a real democracy in a society where such disparities can be found.

*Questions by Robert Poll.*

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SUGGESTED CITATION Sleiman, Issam; Poll, Robert: *Towards a Reform in Lebanon? Interview with the President of the Constitutional Council ISSAM SLEIMAN*, *VerfBlog*, 2018/6/20, <https://verfassungsblog.de/towards-a-reform-in-lebanon-interview-with-the-president-of-the-constitutional-council-issam-sleiman/>.